Should Unions Be Incorporated?

Responsibility of Unions Under the Law

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By

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In view of the great public interest in the legal problems of labor today, The Social Democratic Federation takes pleasure in issuing this pamphlet by Louis Waldman.

Mr. Waldman is a prominent labor attorney, a former member of the New York Legislature and was candidate for governor of the State of New York.

INTRODUCTION

LABOR is in the news. In normal economic times one-third of our people, men, women and, unfortunately, children gain their livelihood by working for someone. With their dependents, they constitute the bulk of our people. Men, women, ld and young, millions on millions of gs, these are labor. Their needs are a cern.

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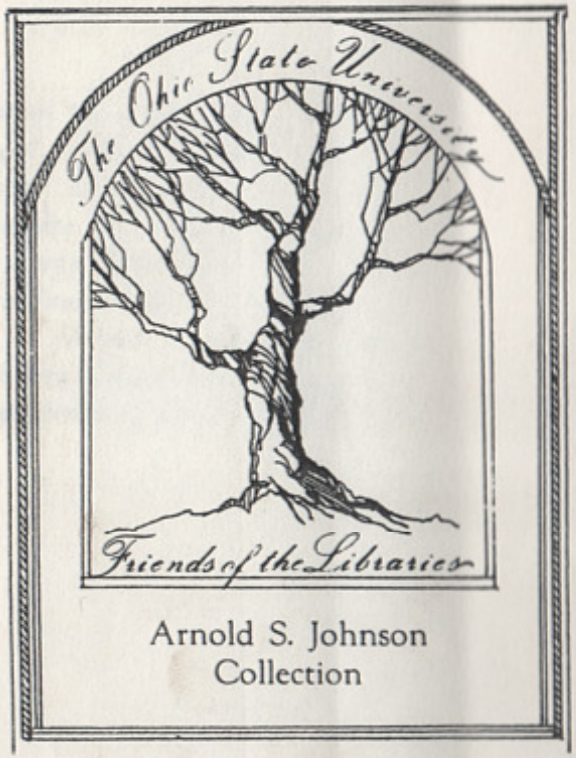

Arnold S. Johnson
Collection

INTRODUCTION

LABOR is in the news. In normal economic times one-third of our people, men, women and, unfortunately, children gain their livelihood by working for someone. With their dependents, they constitute the bulk of our people. Men, women, children, old and young, millions on millions of human beings, these are labor. Their needs are a national concern.

The problems of labor are like the problems of a nation—complex, detailed, bewildering. A variety of organizations compose the labor movement, each one a little world in itself, but in turn related to the others through a national or international federation. Government, industry, finance and the consuming public at large are, too, interested in varying degrees in what labor does and thinks.

Recently there has been a resurgence of activity within the ranks of labor. Side by side with its internal revival there have sprung up new institutions, new laws, new sets of relationships. The public, through its legislatures, has expressed itself on some of the new problems. Others it is still pondering.

Special interests, too, have raised their voice. But not frankly. They pretend to speak for the public, for the laboring men, for honesty, for law observance. Legislators are puzzled, the public is confused.

The material in this booklet attempts to take up the central concern in the present confusion: the responsibility of organized labor. The contents are

divided in three parts. The first concerns the claims of those who declare labor is not responsible and who would hide under this assertion an effort to curb labor's right to organize by compulsory incorporation of labor unions. This attempt has already reached extensive proportions.

Part two of the booklet is an exposition, in plain terms, of the present legal responsibilities of labor unions. The subject concerns not merely labor itself, but the public at large as well. Labor legislation, compared to other branches of law, is comparatively recent. On the other hand a good deal of law applicable to labor unions is derived from other fields of the law and is often not fully known and understood by lawyers as well as non-lawyers.

Finally, in the third part, the state of the British law of trade unions is examined. Those who urge the restriction of unionism in this country assert that their proposals parallel British legislation and would have like favorable results. A true understanding of the English law is therefore desirable.

What I say here is intended to serve as a guide to the legal position of the labor union for labor leaders, for students of labor problems, for legislators, for fair-minded industrialists and business men, and for the great army of trade unionists anxious for the welfare of the labor movement.

SHOULD UNIONS BE INCORPORATED?

I. WHY INCORPORATION?

THERE is a great deal of confusion as to the place and function of labor unions in our social order.

When there is confusion and uncertainty the student turns to history and experience for light and guidance.

Every great social movement in history has faced bitter opposition from those who had special privileges to protect, who misunderstood the aims and purposes of the movement, and who were indifferent to human progress. The labor movement has not escaped this opposition. It must face it.

Every great social movement for human betterment has from time to time attracted to itself undesirable elements—the adventurers, criminals, agitators, and unstable enthusiasts.

The great labor movement in America with its eight million honest, devoted, sincere, industrious workers has not escaped the occasional infiltration of these undesirable elements.

Every great social movement for human betterment whose success meant the dethronement of selfishness, power and greed, has been assailed, not through a direct attack on the movement's aims and purposes, but through the exaggeration and distortion

of the inconsequential and negligible activities of these undesirable elements.

The labor movement is no exception. Its enemies seize upon the occasional racketeer, adventurer or hot-head who finds his way into the labor movement in spite of resistance. They exaggerate his importance, for the purpose of discrediting organized labor generally, and then use it as a pretext to urge compulsory incorporation of labor unions.

In the light of the recent Senate Report on labor spying, there is abundant evidence to show that employers have frequently planted these undesirable elements in the labor movement for the very purpose of discrediting it. At other times, they have been known to bribe and corrupt labor leaders when possible, rather than recognize and deal with a union. Sometimes employers have paid large sums of money to notorious racketeers to prevent, either by intimidation or corruption, or both, the unionization of their business.

Would incorporation eliminate the occasional racketeer who may find his way into the labor movement? It would not. As a matter of fact, *racketeers who desire to shield their lawless activities behind the union label usually incorporate their so-called "unions"*. Where racketeers function in trade associations, these are invariably incorporated. Incorporation has not been a sword against racketeering, but a shield for it.

Would it eliminate industrial strife? It would not. Making the organization and existence of labor unions more difficult will not end strikes, lockouts,

picketing, or even violence. As a matter of industrial history, a policy which impedes free organization of workers, which hampers their opportunities of organization for mutual self-protection, results in more industrial strife, rather than less. Employers have it within their power to diminish strikes, picketing and lockouts by a frank recognition of the rights of their workers to organize and to bargain collectively.

It is a noteworthy fact that the stronger the union in an industry, the less strikes and picketing take place in that industry. The recognition and acceptance of unions as a permanent institution in industrial relations not only diminishes the frequency of strikes and industrial disorder, but replaces the agitational leadership with a sane and constructive leadership, ready to bargain and make agreements and see to it that those agreements are observed.

FREE UNIONS FOR A FREE SOCIETY

Labor unions, as they exist today, are free, voluntary, democratic associations of workers, having their own constitutions, by-laws, and self-government. Compulsory incorporation would mean that no union could be organized without a charter from the State. Nor could the unions continue to exist if the State saw fit to revoke or cancel the charter. In other words, unions would become mere puppets of the State.

Incorporation of trade unions and their subjection to close government regulation is not a new proposal.

When Fascist Italy and Nazi Germany set up their regimes of dictatorship and the totalitarian, corporate state, among their first acts was the crushing of free voluntary trade unions of workers and the setting up of incorporated unions. The corporate state needs incorporated unions. A free democratic state needs free, democratic unions.

Free self-governing unions are a menace to dictatorship, industrial or political. Those who advocate compulsory incorporation of all unions, whether they realize it or not, are proposing legislation which would be the first step towards the totalitarian, fascist state in America.

The labor union is a distinct democratic influence in American social and industrial life. Its chief purpose is to equalize the bargaining power between the employer and employee. Without equality to bargain and to make contracts, there is no democracy, for the essence of democracy is equality.

Trade unions are not, as some believe, the result of the activities of some malevolent agitators. They are a necessary product of our industrial and social system. This was recognized and well stated by no less an eminent Republican than the late William Howard Taft, who, when Chief Justice of the Supreme Court, said in a decision:

> "Labor unions .... were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages

> that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers an opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood."

It is now generally recognized that the rapid growth of great aggregations of capital under unified or corporate control requires a corresponding organization of workingmen into unions which may be able also to act under unified control. Ownership by the large industrialists of the means of production, the machinery and material gives them power to dictate to the workingman the terms of employment. As we all know, the competition for work today is far keener than the competition for workingmen.

That is why public opinion has been and is today in favor of stimulating the organization of labor. Even under President Hoover, before the advent of the New Deal, public opinion supported the need for free self-governing unions. President Hoover affixed his signature to a law in which the public policy of the United States is stated to be that—

> "... under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in the self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Compulsory incorporation of unions would deny labor the full freedom to organize. It would deny them the power of self-government.

LABOR'S OBJECTIONS TO COMPULSORY INCORPORATION

The argument given by some advocates of compulsory incorporation that it would be of benefit to labor is transparent hypocricy. It is significant that although there are great differences of opinion as to organization, structure and policy between the C. I. O., the A. F. of L. and various independent unions, all are united in opposing incorporation.

What are labor's specific objections to compulsory incorporation?

First: No union could be organized or come into existence without a charter from the State. Such a charter could be denied altogether by a hostile political regime. Even delay in granting a charter might prove fatal to the organization of workers at any given time.

Second: Labor unions chartered by the State would be open to attack by political powers. This could be done in the midst of a crucial controversy, as for instance, during a strike. An action to dissolve a union, or even the threat of such an action would tend to demoralize labor's ranks and bring public disfavor upon the union and its cause. Such power would menace the very life or independence of the entire trade union movement.

Third: Compulsory incorporation of unions would enable hostile employers to look into the internal affairs of the union at any time under a legal pretext which there would be no difficulty in finding under corporation laws, and to bring action through

stool pigeons or disgruntled members. This would give hostile employers new weapons against unions.

Fourth: Compulsory incorporation of unions would be discriminatory, class legislation. No employer or group of employers is compelled to incorporate today. Not even the billion-dollar business man, employing thousands of workers need obtain a charter in order to do business. Every one knows that businessmen use incorporation to limit their responsibility. Yet it is proposed that unions be compelled to incorporate!

II. UNION RESPONSIBILITY UNDER THE LAW

Would it increase union responsibility? A favorite device of the enemies of unions is to refer to them as "irresponsible." What are the true facts as to the legal and financial responsibility of unions?

"Responsibility under the law" means making labor unions amenable to the law. Labor unions are today, and always have been, subject to the same laws and liabilities, criminal and civil, as are other organized bodies of individuals.

Responsibility of organizations and individuals toward the public is determined by the criminal law. The unions, their leaders and members are fully amenable to the criminal law. For acts forbidden by the Penal Law, labor unions, labor leaders and union members are as liable as others.

In addition, labor unions, by their very nature as combinations of working men, are peculiarly subject to prosecution under conspiracy statutes. These conspiracy statutes are loose and general in language and rooted in the law as a weapon against organized labor. They constitute the joy of District Attorneys desirous of proceeding criminally against any labor leader or labor union when there is no real crime to form the basis of a prosecution. If anything, these laws place labor unions and labor leaders under too great a responsibility at the present time.

In the same way, it is idle to talk of labor unions being civilly irresponsible for their acts. A union is as liable for damages inflicted by wrongful acts on its part as any other organization, corporation or individual, whether such wrongful acts are committed against its own members, or in its relations with employers. If a union or its agents commit torts, the union must respond in damages under the general law applicable to such cases. And if a union breaches a contract it is likewise liable for damages.

Advocates of legislation to make unions "responsible" also forget completely about the Anti-Trust Laws. Under the Sherman Anti-Trust Act, both civil and criminal liability of a very drastic nature is imposed upon labor unions.

If an employer shows that his business has been injured by any act of a labor union which restrains interstate commerce, he may not only recover actual damages, but treble damages. The Danbury Hatters

case, in which judgments were obtained against the Hatters Union totaling over $252,000, which incidentally, were paid in full, is still the law today. Numerous cases have been instituted in recent years under that law against the United Mine Workers, and there are actions pending today against other unions.

In addition, the Anti-Trust Acts entitle an employer to sue for an injunction. They give the Federal District Attorneys the power to indict and prosecute labor unions and their officers for any acts deemed to be a combination or conspiracy in restraint of interstate commerce. Such prosecutions have not been unknown in recent years.

Neither the Clayton Act nor any other legislation enacted since the Sherman Act was passed in 1890 has in any way modified the liability of labor unions, by way of damages, injunction or criminal prosecution under the Anti-Trust Laws.

No, labor unions are not above the law. No further legislation is needed to make labor unions responsible. Those who demand such legislation are raising a false issue. What these advocates of additional legislation want is to fasten greater responsibilities on labor unions than is attached by our laws to other organizations and individuals. They want class legislation against labor unions, not equality.

Some would have us believe that the Federal and State Anti-Injunction Acts "declare that labor unions shall not be responsible for the acts of their officers and agents in the same way that every other citizen,

in every other activity of life, is responsible." What do the statutes actually provide? To quote from Section 6 of the Federal Anti-Injunction Act, upon which the State statutes are based:

> "No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

How does this free labor unions from responsibility for the acts of their officers and agents? All that the statute requires is proof that the unlawful acts sought to be fastened on a labor union were actually committed by an officer, member or agent of the union, and that the acts were authorized by the union before or ratified by the union after their commission.

This is merely a restatement of the general rule of agency. It is applicable to all persons and situations. A principal is not liable for crimes or torts committed by an agent outside his instructions, unless the principal thereafter ratified the unlawful acts.

Unfortunately, however, this salutary rule was honored more by its breach than by its application where labor unions were involved. And when an

attempt is made to remedy the situation and give to labor unions the same rights and privileges as any other litigant has in a court of law or equity, the cry is raised that unions are being cloaked with "legal immunities."

For the same reason the criticism that the Wagner Act is one-sided is unsound. That act does not confer a single right upon labor that labor did not technically possess before its enactment. All the act does is to seek to protect labor in these rights by restraining employers from unlawfully interfering with them.

In view of the nature of the mischief sought to be remedied, the Wagner Act, like all remedial legislation of necessity had to be "one-sided." Only in that manner could labor be placed on some degree of equality with employers.

The sudden concern for the democratic rights of their employees on the part of those who only yesterday were organizing and promoting company unions is a bit hypocritical, and will fool no one.

It is said that these statutes permit a union to violate its contract with an employer. Yet one need only glance at the very first section of the New York act to see that an injunction may be obtained to restrain "a breach of any contract not contrary to public policy." Under these acts an employer may also obtain an injunction to restrain "fraud violence, or breach of the peace." These are the only grounds upon which an employer was justly entitled to an injunction before the passage of the Anti-Injunction Laws.

It is true that it is not as easy for an employer to obtain an injunction under these laws as it was before. No longer may a judge restrain peaceful picketing simply because, in his opinion, "picketing may hardly be termed a manly occupation," or because of some other whim or fancy on the part of the judge. No longer can an injunction be obtained on affidavits; and when a witness must appear in court to testify and to be cross-examined, the true facts usually come out.

It's high time that labor got an even break with employers from government. That is all the recent enactments give to labor.

FINANCIAL RESPONSIBILITY OF UNIONS

It is commonly asserted that unions are financially irresponsible. That, of course, is not true. Modern industrial unions are as responsible financially as big business. In fact, more so. Large corporations may be financially sound today and bankrupt tomorrow. Generally speaking, a union and the sources of its finances continue as long as there are workers in the industry interested in collective bargaining and in the betterment of their economic and social conditions.

It is quite inaccurate to speak about the finances of the union being "entirely concealed from the public and their own rank and file." As a matter of fact, the finances of every responsible union are

made known to the rank and file and their large treasuries are well known to the public. Unions frequently boast of their large treasuries to impress employers with their resources in case of a strike.

Such labor unions as the United Mine Workers, the Brotherhood of Carpenters, the Machinists International, the International Ladies' Garment Workers, the Amalgamated Clothing Workers and the Brotherhood of Electrical Workers, cannot be said to be financially irresponsible. Moreover, individual members of a union are financially responsive with all their personal possessions to pay the obligations of the unions, as was shown in the Danbury Hatters case.

Why then this idle talk about making unions amenable to or responsible under the law? Does it not all come down to a desire on the part of the proponents of incorporation to use such legislation to cripple, and if possible destroy, the effectiveness of labor unions, rather than to do away with alleged abuses?

III. THE BRITISH EXAMPLE

Another popular misconception about the position of labor unions is that it would do them good to incorporate because British unions are incorporated, and the British are supposed to manage their labor problem better than we do in America.

We should be on our guard against merely copying foreign legislation. To learn from experience in foreign lands is commendable, to copy is foolish.

Laws are passed to suit local conditions and what may be a good law in England may be a poor law in the United States. However, England does not require its unions to incorporate. There are as few incorporated unions in England as there are in the United States.

Registration of unions is not compulsory in England. Unions can register or not as they please. The law under which the choice of registration is given to unions is the Trade Union Act of 1871. This act was passed to remedy the bad situation in respect to existent labor legislation. An English union was then subject to prosecution as a conspiracy in restraint of trade, a union could not sue or be sued in court, a union could not hold property in its own name, the union constitution and by-laws could not be enforced.

The Trade Union Act of 1871 sought to remedy this situation. A union which registered under the Act obtained certain privileges. It would no longer be subject to criminal prosecution merely because its purposes were in restraint of trade, union funds and rules were protected and in general the union's right to existence and to manage its own affairs for its members' benefit was recognized and safeguarded. The conditions imposed on unions in return for these privileges were chiefly as follows. The by-laws of the union had to state the purposes of the union, the manner of appointing and removing officers, the manner of distributing benefits and levying fines. Provisions was to be made for investment of funds and for audit of books. In other words, the law did

not restrain unions; it conferred rights upon them and gave the members certain powers of self-government which might have been difficult to achieve without legislation sixty-seven years ago.

Opponents of organized labor in the United States twist the Trade Union Act of 1871 into an argument for similar legislation in the United States sixty-seven years after the British Act was passed. During these many years, American labor has obtained, by judicial decision, custom and social recognition, the very advantages which were conferred on British labor by the legislation of 1871. It is noteworthy that in England, since that Act, judicial decision has served to erase the gap between registered and non-registered unions. Today, practically the only difference between registered and other unions is that registered unions have certain legal protection for their funds which non-registered unions do not have. American labor does not need a system of registration, because it has otherwise achieved the desired benefits.

There are some minor points about British labor law which are also misunderstood in the United States, principally as to political contributions by trade unions. In 1913, because of a judicial decision that unions could not levy dues on their members for political purposes, a law was passed permitting such an assessment by a majority vote of the members. Any one not wishing to be included in such an assessment had to give notice to that effect. In 1927, a year of great anti-union reaction in England, this law was changed. Today union

members cannot be assessed for political funds unless they first consent to do so.

On the other hand, American labor is under some disabilities from which British labor is free. Under the Trade Union Act of 1906, intended to prevent judgments against union members such as was upheld in the famous Taff Vale case, English union members are not liable in damages for union acts interfering with the business of the employer. In the United States, when such business is interstate commerce, each member of the union is liable, under the Sherman Anti-Trust Act, to triple damages. American union members have paid damages under this law and some unions are this very day being sued under it.

It would be inaccurate to end any discussion of English labor law, no matter how incomplete, without adding that in England employers and government frequently unite in encouraging union organization. The right to strike is fully safeguarded unless the strike is intended to coerce the government.

We can see, therefore, that if the history of British unionism is to teach America anything, that example amounts to this: that labor must be given full rights to find its just place in society and government.

IV. CONCLUSION

In the final analysis, one's attitude towards the question before us—that of compulsory incorporation of unions—is determined by certain fundamental conceptions as to the place and function of labor unions in our modern industrial civilization.

If it is assumed that trade unions are oppressive monopolies, that their leaders are self-seeking demagogues or grafters, if not Reds and anarchists, the conclusion is easily reached that unions ought to be restricted and compelled by law to incorporate. Those who think that way, believe that a union's every act ought to be carefully watched under the guidance of a government probation or police officer, like a paroled convict, or a criminal suspect who cannot be trusted.

On the other hand, if it is believed that free, self-governing unions are a bulwark of democracy; that labor unions obtain for the workers a measure of economic security; that labor unions alone can enable workers to bargain on equal terms with their employers; that labor unions are the greatest stabilizing factor making for industrial peace; and that labor unions perform a great social function in lifting the masses of labor into a higher and better standard of life; then, necessarily and inevitably, the opposite conclusion is reached—a conclusion that labor unions ought to be stimulated rather than hindered; and that legislation requiring the incorporation of unions is unnecessary and undesirable either from the standpoint of labor or from that of the general welfare.

In a troubled world, where freedom and democracy are battling for supremacy with reaction and dictatorship, we would render a disservice to our democratic institutions if we embarked on a policy of ill-considered legislation that would weaken a great democratic force—the organized labor movement of our country.